

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:04-CR-00090-F-1

UNITED STATES OF AMERICA

v.

WILLIE FRANKLIN STITH,
Defendant.

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ORDER

This matter is before the court on Willie Franklin Stith's Motion to Address and Preserve *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) Issue [DE-39]. In his motion, Stith appears to argue that he is no longer a career offender in light of *Simmons*. Also, Stith requests that counsel be appointed to assist him.

Stith is attacking the validity of his sentence; thus, the appropriate avenue to bring this challenge is by way of a § 2255 motion.¹ To the extent that Stith seeks to file a § 2255 motion, he must file it on the appropriate form. The Clerk of Court hereby is DIRECTED to send a copy of the appropriate § 2255 form to Stith. If Stith elects to pursue a § 2255 motion, he shall have twenty-eight days within which to file his motion on the appropriate § 2255 form provided by the Clerk. Stith should send the original of the § 2255 form to:

Clerk of Court
United States District Court, E.D.N.C.
ATTN: Prisoner Litigation Division
P.O. Box 25670
Raleigh, North Carolina 27611

¹Title 28 Section 2255 states four grounds upon which such relief may be claimed: (1) that the sentence was imposed in violation of the Constitution or laws of the United States; (2) that the court was without jurisdiction to impose such sentence; (3) that the sentence was in excess of the maximum authorized by law; and (4) that the sentence is otherwise subject to collateral attack. 28 U.S.C. § 2255(a).

With respect to his request for the appointment of counsel, Stith is entitled to have counsel review his case pursuant to Standing Order No. 11-SO-3 (E.D.N.C. Oct. 18, 2011). A review of the record reveals that counsel was appointed for this limited purpose on August 21, 2012.

In light of the foregoing, Stith's Motion to Address and Preserve *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) Issue [DE-39] is DENIED.

SO ORDERED.

This 3rd day of September 2014.



JAMES C. FOX
SENIOR UNITED STATES DISTRICT JUDGE